



California Fair Political Practices Commission

December 22, 1987

Pamela Townsend, Planner
Modoc County Planning Department
202 West 4th Street
Alturas, CA 96101

Re: Your Request for Advice
Our Advice File No. I-87-287

Dear Ms. Townsend:

I have been asked to reply to your letter addressed to Robert Leidigh of our staff. In that letter, you are asking several questions relating to the conflict of interest code provisions of the Political Reform Act.^{1/}

QUESTIONS

For several positions in the county, you are asking if those positions are required to file statements of economic interests, what the statutory authority is requiring such designation, and under whose conflict of interest code the statements should be filed. Those positions are the planning director, the public works director, road commissioners, department heads and members of the Environmental Review Committee.

CONCLUSION

As provided for in Section 87302, the positions enumerated above are the type which would appropriately be included in a conflict of interest code. The decision to include these positions within the County of Modoc's conflict of interest code, or within a separate code of the department, lies with the Modoc County Board of Supervisors.

DISCUSSION

Section 87200 enumerates the high-level positions required to disclose their economic interests under the provisions of the Political Reform Act. For all other positions, each agency is required to develop a conflict of interest code covering all

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

positions which make or participate in the making of decisions which may affect their financial interests. The conflict of interest code shall further specify what economic interests are required to be disclosed by those positions. (Sections 87300 and 87302.) The statute does not specifically set out those positions to be covered by a code as it does for the high-level public officials under Section 87200.

There is no "across the board" rule or statutory authority which would require all planning directors or public works directors to be included in a conflict of interest code. If the person makes or participates in the making of decisions which can affect private financial interests, then that position, in accordance with Section 87302, should be designated.

In considering whether a person holding a particular position makes or participates in the making of decisions, among the questions you should ask would be: Does the person vote on any matter? Appoint a person? Commit the agency to any course of action? Negotiate or enter into contracts on behalf of the agency? Advise or make recommendations to the decision-maker?

As to the positions you are specifically questioning, the planning director and other planning department staff members approve minor subdivisions, lot line adjustments and make recommendations on other land use entitlements. Since these decisions can foreseeably affect the value of property which is the subject of the recommendation or affect the value of surrounding property, they should be covered by a conflict of interest code. These employees should disclose their interests in real property as well as investments and business positions in and income from business entities located in, doing business in or planning to do business in the County of Modoc.

The public works director, road commissioners and other department heads make contracting decisions or recommendations on contracts on behalf of the county. These positions also should be covered. It is suggested that a disclosure category be developed for these positions which could read: "Persons in this disclosure category shall disclose investments and business positions in and sources of income from business entities which provide services, supplies, machinery or equipment of the type utilized by the county."

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December 22, 1987
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The members of the Environmental Review Committee make determinations on the type of environmental document to be prepared but do not make determinations of approval or denial. The committee does propose mitigation measures which often become conditions attached to the project by the approving body. In this regard, it is possible that the committee could impose certain restrictions that could alter the result of the Environmental Impact Report (EIR), the project which is the subject of the EIR, or the neighboring property which could be affected by the EIR. Their decisions could also impact upon any consulting firm which the county uses to prepare EIRs.

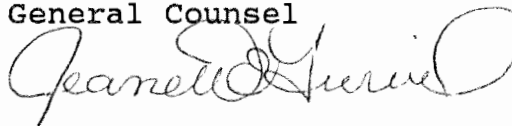
These positions also should disclose their interests in real property, investments, business positions and income from business entities located in, doing business in, or planning to do business in the County of Modoc.

As to your question regarding which conflict of interest code should designate these positions, the Act requires that codes be adopted at the most decentralized level possible. The question of the level of decentralization for your code should be answered by the county board of supervisors. (Section 87301.) However, several small rural counties have developed one document which includes all districts within the county as well as all departments within the county governmental organization. For larger counties, it is easier to develop one code which includes all county governmental departments and separate codes for each specialized district within the county. Los Angeles County has separate codes for each department because of its size.

I hope this has been helpful to you. If you have any other questions, please phone me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeanette Turvill
Legal Assistant

JET:jj:da

MODOC COUNTY PLANNING DEPARTMENT

202 WEST 4th STREET
Phone: (916) 233-3939 ext. 403 or 404
ALTURAS, CALIFORNIA 96101

Nov 13 8 55 AM '87

November 10, 1987

Robert E. Leidigh
Legal Division
Fair Political Practices
P.O. Box 807
Sacramento, CA 95804

Dear Mr. ^{Bob} Leidigh:

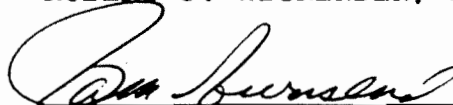
Your presentation in Alturas was very enlightening. I would like to express our appreciation for your time in making the presentation.

Several questions were raised concerning personnel who must file conflict of interest statements. We would like a written reply as to whether the following must file a statement, and reference as to the statutory authority, and under whose conflict of interest code filing should occur:

1. Planning Director - approves minor subdivision, lot line adjustments and makes recommendations on other land use entitlements. Also planning department staff members who make recommendations on land use entitlements.
2. Public Works Director, Road Commissioner or other department heads who may sign contracts for consultant services, or make recommendations thereon; or who purchase supplies or other materials. If such persons are required to file, under what authority is this required.
3. Members of Environmental Review Committee make determinations on the type of environmental document to be prepared but do not make determinations of approval or denial. The Committee does propose mitigation measures which often become conditions attached to the project by the approving body. Any decision of the Committee is appealable to the Planning Commission and Board of Supervisors.

Sincerely,

ROBERT J. WICKENDEN, DIRECTOR



Pamela Townsend
Planner

87-287

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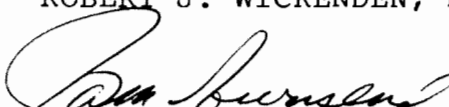
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Sincerely,

ROBERT J. WICKENDEN, DIRECTOR



Pamela Townsend
Planner



California Fair Political Practices Commission

November 18, 1987

Robert J. Wickenden
Modoc County Planning Department
202 West 4th Street
Alturas, CA 96101

Re: 87-287

Dear Mr. Wickenden:

Your letter requesting advice under the Political Reform Act was received on November 13, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeanette Turvill, in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, we will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel
by Ked

DMG:plh